Court No.2

In the High Court of Uttaranchal at Nainital.

Appeal Against Award No. 46 of 2003.

The New India Assurance Company Ltd.,
Branch Uttarkashi, through its Divisional
Manager, Opposite Judgee Court,
Nainital Road, Haldwani (Nainital).

..... Appellant.

Versus

1. Sri Chaman Lal S/o Bhog Dass,
   R/o Peepal Mandi, Chinalseesoad,
   C/o Sri Chandramohan peon,
   Govt. Inter College, Chinyaleesoad,
   District-Uttarkashi.

..... Claimant/Respondent.

2. Amredra Singh S/o Sri Amar Singh,
   R/o Village-Syanala Patti-Bhadarsaun-Dudda,
   District-Uttarkashi, (Vehicle Owner)
3. Sri Soorat Chandra S/o Shanker Chand,
   R/o Village-Ramolgaron,
   Tehsil Tehri Garhwal,
   District Tehri Garhwal.(Driver)

..... Respondents

Sri Tanveer Alam Khan, learned counsel for the appellant.
Sri H.M., Raturi & Sri B.S. Negi, learned counsel for the claimant.

Dated: 23rd Aug., 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant-Insurance Company against the judgment and award dated 20.12.2002 passed by Motor Accident Claims Tribunal Uttarkashi in Motor accident Claim Petition No. 38 of 2001, by which the Tribunal has decreed the claim petition of the injured-claimant for Rs. 6,74,000/- as compensation with interest against the Opp. Party/appellant.

2- Brief facts giving rise to this appeal are that on 09.5.2001 at 7:00 A.M. the claimant Chaman Lal boarded in bus No. UPY 2358 at Chinyalisaud to come to Dunda The said bus due to rash and negligent driving by Soorat Chand-Opp. Party No.2 met with an accident and fell into Khud. In the said accident the claimant sustained grievous injuries. His backbone has severally been damaged and right leg has been fractured. He got his medical treatment done in District Hospital Uttarkashi from where he has been referred for better treatment. Then he was medically treated in different Hospitals at Dehradun till 03.8.2001.

3- The Opp. Party Nos. 1 & 3 contested the claim petition by filing their written statement separately. The Opp. Party No. 3-Insurance Company denied the insurance of the vehicle in question with it and also pleaded that the driver of the said vehicle was not having a valid driving licence. The Tribunal framed necessary issues on the pleadings of the parties and decided the same in favour of the claimant. The claim petition was allowed accordingly for compensation due to injuries suffered by him in the said accident. Feeling aggrieved, the Insurance Company has come up in appeal.

4- The learned counsel for the appellant challenged the appeal only on two grounds. The first ground of challenge is that the relationship between insurer and insured never existed at the time of accident because the appellant when produced a cheque dated 31.05.2000 issued by the insured in the Bank it become dishonoured due to insufficient funds. This has been intimated to the insured by registered post on 14.6.2000 and also informed that the appellant has no risk in respect of the policy of insurance. The second ground is that the driver of the offending bus was having no valid driving license at the

time of accident, hence the Tribunal committed error in fastening liability to pay the compensation.

5- We have gone through the impugned judgment. The learned Tribunal has dealt with both these points by framing Issue No. 2 that, "*Whether the vehicle in question was plying in violation of terms and conditions of the insurance policy".* While deciding this issue the Tribunal has thoroughly discussed on the basis of the evidence of the parties that the insured denied the receipt of letter issued by the Insurance Company informing him that the cheque issued by the owner has been dishonoured. The burden to prove this fact lies on the appellant but the appellant did not prove that the owner has been served sufficiently about the matter. In this regard it is clear from the statement on oath of D.W.1-A.K. Gupta that after deposit the cheque the insurance cover note was issued and due to issuance of cover note it is deemed that the vehicle in question has been insured validly. The learned Tribunal relying *on the case law of the* Apex Court in *Oriental Insurance Company Ltd. versus Inderjit Kaur and others, reported in 1998 ACJ 123* rightly held that on the date of accident the vehicle in question was fully covered by the terms and conditions of the insurance policy.

6- It has further been contended on behalf of the appellant that the learned Tribunal has not appreciated the evidence that the driver of the offending vehicle was not holding a valid driving licence. The said driver was authorized to drive the Heavy Motor Vehicles but he was driving the Heavy Passengers Vehicle, therefore the learned Tribunal has committed manifest error. On the basis of the evidence it is true that the driver of the offending bus was holding a driving licence which was meant for Heavy Motor Vehicles; but only on that count, the Insurance Company

cannot be absolved from its liability to pay the compensation. The tribunal in its finding on issue No.2 in the last paragraph of impugned judgment has clearly held that the Insurance Company may, if it so desires, can take recourse to recover the compensation amount from the insure/owner of the vehicle. In view of this clear cut finding of the Tribunal, it does not lie in the mouth of the appellant to reiterate the matter before this Court. We are fortified in our view by the verdict of the Apex Court in the case ***National Insurance Company Limited versus Swaran Singh and others, reported in (2004) 3 Supreme Court Cases, page 297*** in which the Apex Court has elaborately discussed all the relevant provisions of Section 149(2)(a)(ii), 149(7), 168 and 174 of the Motor Vehicles Act, 1988 and paragraph 110 of the said case is fully applicable to the contention as raised by the learned counsel for the appellant. While dealing with the relevant provisions of law, as may be applicable to the facts of the present case, the Hon'ble Supreme Court has held in paras 71 and 110-The provisions of sub-sections (4) and (5) of Section 149 of the Act, may be considered as the liability of the Insurer to satisfy the decree, at the first instance-The provisions contained in sub-section (4) with 'proviso' thereunder and sub-section (5), which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance, on behalf of the insured, can be taken recourse of by the Tribunal and be extended to the claims and the defences of the insurer against the insured, by relegating them to the remedy before regular court, in cases, where on given facts and circumstances, adjudication of their claims inter se might delay the adjudication of the claims of the victims.

7- Following the ratio of the pronouncement of the Apex Court, we are of the opinion that the *Insurance Company must first satisfy the award before the learned Tribunal and then can file its objection, if it so desires, before the executing court for redressal of its grievances about the dispute between the insurer and the insured by that court/tribunal in accordance with the provisions of the Act. However, nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeals.*

8- Accordingly, the appeal fails on merit.

9. The appeal is dismissed with the aforesaid observations. The impugned judgment and award is upheld. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma,J.)**

P.Singh